IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 952 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

HIRJI RAVJI

Appearance:

MR AJ DESAI, APP for Appellant - State

MR VM DHOTRE for Respondents No. 1-3

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 29/01/2004

ORAL JUDGEMENT (Per : HON'BLE MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by the State against the judgement and order of acquittal delivered by learned Additional Sessions Judge, Junagadh, on 21.4.1986, in Session Case No. 68 of 1985 whereby present respondents being accused of the said Session Case and were charged for the offences under Section 302 read with Sections 34, 109 of the IPC were acquitted by learned Additional Sessions Judge of all the charges levelled against the respondents.

2. The facts leading to the prosecution of present respondents are as under :

That the incident in question occurred on 3.7.1985 around 8.45 p.m. at Ambedkarnagar in the city of Junagadh. The First Information Report came to be filed by PW-2 Yusuf Aba Saiyad Exh.17 that one Gordhan Mohan died in the incident. Deceased Gordhan Mohan, PW-7 Maganbhai Mohanbhai and Ramjibhai Mohanbhai were three brothers and were doing their business. PW-7 Maganbhai Mohanbhai and his brothers were residing in Ambedkarnagar on the date of the incident. The accused - respondents also were the residents of the said locality and the witnesses and deceased had some quarrel about construction of a wall between their houses. On 6.7.1985 PW-7 Maganbhai Mohanbhai and deceased Gordhan in the morning had come to their business place. The complainant PW-2 Yusuf Aba Saiyad who was owning Garage near the business place of the deceased. PW-7 Maganbhai had told deceased Gordhanbhai and complainant Yusufbhai to go to Ambedkarnagar and take measurement of a window, so that an iron grill can be installed there. Therefore, deceased Gordhanbhai and PW-2 Yusufbhai had gone to the scene of incident on one luna moped and the scene of incident was at the house of deceased. According to the prosecution case, when PW-2 Yusufbhai and deceased Gordhanbhai reached to the scene of incident, they found the doors of the house locked and since according to deceased, he had not the keys of the lock, they jumped compound wall and entered in the compound of fali. At that time, respondents No.2 and 3 i.e. accused Nos.2 and 3 caught hold of the deceased Gordhanbhai and accused No.1 i.e. respondent No.1 inflicted knife flows to deceased Gordhan. PW-2 Yusufbhai saw four or five knife blows being inflicted to the deceased by respondent No.1 and thereafter he escaped running away from the scene of offence and found that accused Nos. 2 and 3 were chasing him while accused No.1 ran away from the spot. The accused while running away from the scene of incident, were seen by neighbours i.e. PW-3 Jayaben Karsanbhai and PW-4 Aminaben Osmanbhai. PW-2 Yusufbhai went straight to

PW-7 Maganbhai, brother of the deceased and informed him about the incident. So, PW-7 Maganbhai straightaway went to the scene of incident and advised PW-2 Yusufbhai to go to the Police Station to inform them. PW-2 Yusufbhai thereafter went to the Police Station and approached PW-14 Kashinath Thorat, PSI and IO, who started recording his complaint and while he was recording his complaint, he found that accused No.1 respondent No.1 herein approached PSI Kashinath Thorat with a knife and blood stained clothes, so the accused No.1 was arrested with muddamal knife and blood stained clothes which were seized by the panchnama. After recording of the FIR, investigation was completed and charge sheet came to be filed for the above said offence against the respondents in the Court of learned Judicial Magistrate, Junagadh, who in turn committed the case to the court of Sessions, which was registered as Session Case No. 68 of 1985.

3. Learned Additional Sessions Judge, Junagadh, framed the charge at Exh. 1 against all the three accused, to which all the accused pleaded not guilty and therefore the prosecution examined 14 witnesses and placed on record documentary evidence as well. After the evidence was recorded, further statements of the accused were recorded by the learned Trial Judge and after hearing both the parties, vide the judgment and order impugned in this Appeal, all the accused were acquitted of the charges levelled against them and hence this Appeal by the State.

4. Learned APP Mr. A.J. Desai for the appellant State and learned Advocate Mr. V.M.Dhotre for the respondents were heard at length.

5. It was vehemently urged on behalf of the appellant that the learned Judge erred in acquitting the accused because the appreciation of the evidence by learned Additional Sessions Judge suffers from flaws and that the reasons are not sustainable while learned Advocate for the respondents supported the judgment and order impugned in this Appeal.

6. In acquittal appeals, ordinarily, the appellate court should be slow in interfering the order of acquittal though the appellate court enjoys the same powers in acquittal appeals also which the appellate court exercises in appeals against the conviction as well. Only when the conclusion arrived at by the Trial Judge appears to be so unjust, perverse, based on improper appreciation of evidence, the order of acquittal should be interfered with. Therefore, it is always

necessary in acquittal appeals to re-appreciate the evidence as well as to scrutinize carefully the reasons recorded by the Trial Court for acquitting the accused.

7. We have carefully scanned the evidence on record and have found that mostly the prosecution has relied upon three categories of evidence, namely, (i) direct evidence i.e. three eye witnesses i.e. PW-2 Yusufbhai Aba Saiyad, PW-3 Jayaben Karsanbhai and Aminaben Osmanbhai PW-4' (ii) circumstantial evidence of recovery of blood stained knife from accused Nos. 1 and 2, and (iii) recovery of clothes having blood stains of the group of the deceased.

8. So far as direct evidence of eye witness PW-2 Yusufbhai Aba Saiyad is concerned, we have found that his evidence suffers from so many infirmities and contradictions. He stated that the deceased Gordhanbhai was at the site where he found that accused Nos. 2 and 3 caught hold of the deceased Gordhanbhai and accused No.1 inflicted knife blows on the body of the deceased and thereafter he escaped from the scene of offence and was chased by accused No. 2 and 3. As said above, thereafter he approached PW-7 Maganbhai Mohanbhai and in turn went to the Police Station and while recording the complaint, which is at Exh. 41, accused No.1 with a knife in hand and with blood stained clothes came to the Police Station.

9. The first and foremost question which arises is in respect of the identity of the accused. It is categorical case of PW-2 Yusufbhai, eye witness that he did not know any of the respondent accused. When accused No.1 reached to the Police Station, and in the presence of IO Kashinath Thorat at the time only he came to know the name of accused No.1. This is recorded in complaint which is at Exh. 41. In the first part of the First Information Report which is the Proforma under Section 154 of the Criminal Procedure Code, in Col. No.5 in the name of the accused, it is written as "Hirji Ravji Kumbhar and his two brothers". Now, it is not found from the evidence that when accused No.1 reached to the Police Station. But it is certain that after some portion of the First Information Report was recorded, accused No.1 reached at the Police Station, which is evident from para-3 of the deposition of the Investigating Officer which is at Exh.40. If accused No.1 reached at the Police Station while the Investigating Officer was recording the complaint, then it is not understood that how in the first part in Column No.5 of the First Information Report the name of the accused No.1 appears

along with the narration that "his two brothers". If the accused No.1 stated before the Police that in the crime he himself and his two brothers were involved, then such statement is not admissible in evidence. The fact must be appreciated along with this fact that the complainant PW-2 Yusufbhai did not know any of the accused nor did he know all three accused were brothers. Therefore, it was not possible for him that he would state before PW-14 Kashinath Thorat, PSI that other two accused were the brothers of accused No.1. Therefore, the recording of the FIR and manner in which the prosecution comes with the fact that accused No.1 came to the Police Station while complaint Exh. 41 was being recorded appears to be unnatural and there is no explanation from the prosecution that in Column No.5 of the First Information Report which according to circumstances must have been written before recording of the complaint at Exh. 41, how the names of the accused No.1 and "his two brothers" are mentioned by the Investigating Officer. It is admitted fact that Test Identification Parade for other two accused was not conducted by the I.O. Eye witness is not therefore worthy of credit. Not only that the learned Judge in paras 53 to 66 of his judgment which is impugned has given cogent reasons to disbelieve the say of this eye witness. The learned APP was unable to meet with these reasons and convince us to interfere with the order of acquittal.

10. So far as when two witnesses i.e. PW-3 Jayaben Karsanbhai and PW-4 Aminaben Osmanbhai are concerned, they have seen the accused running away from the scene of offence and they have not seen the crime having been committed by the accused. But, going through the evidence, it is found that the evidence of PW-3 Jayaben Karsanbhai and PW-4 Aminaben Osmanbhai is in conflict with the evidence of complainant Yusufbhai. Complainant Yusufbhai categorically states that the accused Nos. 2 and 3 chased him and accused No.1 ran away from the incident while PW-3 Jayaben says that accused No.1 went towards the city and accused Nos. 2 and 3 chased the boy and she did not see if boy was proceeding before the accused Nos. 2 and 3. None of the witnesses, PW-3 or PW-4 identified complainant Yusuf Aba Saiyad to be a boy to whom accused Nos.2 and 3 were chasing. The directions which both the witnesses namely Jayaben Karsanbhai and Aminaben Osmanbhai narrated about the escape and running away of the accused is conflicting and contrary with each other and, therefore, the testimony of these two witnesses fails to inspire any confidence to come to the conclusion that the accused were running from the scene of offence and were noticed by these two witnesses.

11. The next circumstance which prosecution proposed to prove its case is in respect of recovery of clothes and knife from the accused. It is found while reappreciating the evidence that the panch witness Jivanlal Gordhandas was examined by the prosecution to prove the panchnama of arrest and weapons recovered from accused No.1 including blood stained clothes. This witness was not believed by the Trial Judge firstly because PW-6 Jivanlal Gordhandas, panch of panchnama Exh. 22 was related to the deceased. He admitted in cross-examination that it was PW-7 Maganbhai Mohanbhai who brought PW-6 Jivanlal Gordhandas and other panch to the Police Station and, therefore, no much reliance can be placed on the evidence of recovery of weapons from accused No.1 nor recovery of blood stained clothes. While so far as accused No. 2 is concerned, it was the prosecution case that accused No.2 left his blood stained clothes at his own house at Junagadh which was recovered from his wife by Police. The prosecution relied upon the evidence of PW-11 Navneetlal Amrut Exh.33, panch of panchnama of recovery of weapons from the wife of the accused No.2, but PW-11 categorically stated in his cross-examination that he did not notice any stains of blood on the clothes, which were recovered from the wife of the accused No.2 because there was no light at the time of drawing such panchnama. He also stated that the said clothes were not sealed in his presence and, therefore, the recovery of blood stained clothes from the wife of accused No.2 is not beyond suspicion.

12. Further it is noteworthy that one more knife was found from the scene of offence with blood stains that was sent to Forensic Science Laboratory and was found that the said knife contained blood group of the deceased. Now it is not the prosecution case that deceased was attacked by two knives. This is a suspicious circumstances taken into consideration by the learned Trial Judge.

13. Learned Trial Judge found that the evidence of complainant Yusufbai was in conflict with the evidence of other witnesses and since the evidence of PW-3 Jayaben Karsanbhai and PW-4 Aminaben Osmanbhai was not reliable and circumstantial evidence was also not proved beyond doubt, the learned Trial Judge came to the conclusion that the charges against the present respondents were not proved beyond reasonable doubt.

14. We could not find any flaw or fault with the reasoning given by the learned Trial Judge for acquittal

of the respondents. Therefore we are not inclined to interfere with the order of acquittal which is impugned in this Appeal even after re-appreciating the evidence as above and hence the Appeal is required to be dismissed, for the above said reasons.

15. In the result, this Appeal fails and is dismissed. Bail bonds of the respondents - accused stand cancelled.

(B.J.Shethna, J.)

(J.R. Vora, J.)

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